

**Common Interest Communities Work Group
September 12, 2006
Patrick Henry Building
House Room 1
10:00 A.M.**

Work Group members present were:

Senator Mary Margaret Whipple -- Chair

Delegate John Cosgrove

Ron Kirby

Tom Meyer

Tom Perry

Cynthia Schrier

Pia Trigiani

Special Guest: **Delegate Kris Amundson**

Senator Whipple called the meeting to order at 10:00 a.m.

The first item on the agenda, **HB 1096**, was discussed by Delegate Amundson. She discussed how her bill interrelates with federal legislation.

The issue that precipitated this bill was a gentleman who was prohibited from flying his flag at his home within his condominium association.

Both Senator Ticer and Delegate Amundson were invited to speak to the work group. Senator Whipple explained that the bill was a carry over bill being discussed today in the hopes of reaching a consensus. Since last session federal legislation was passed that is very similar to HB 1096 and the condominium association made an allowance for the flag to be flown 12 times a year.

The goal of this legislation is to be able to fly the United States flag. Both, the House and Senate bills say flag flying should not to be regulated except as to reasonable time, place, size and manner.

Senator Whipple said the bills will be amended to apply to the flag of the United States only.

Delegate Amundson said she has not known the federal government to regulate condominium associations. She noted that time, place, and manner are usually a restriction on government not on a condominium association.

A discussion ensued about the notion that there are particular restrains regarding speech.

Delegate Cosgrove said that there are current flag restrictions such prohibiting flying the flag at night with out a spotlight. He said he knows reasonable when he sees it and only 12 days a year is not reasonable.

Senator Whipple said she didn't know if the work group wants to be more expansive on this issue than the federal government.

Work group member Pia Trigiani said that the community association concerns have to do with the ability of the state to monitor restrictive covenants; an example being satellite dishes, where the federal government can preempt the state government. She said the Virginia Constitution does not allow for the modification of a person's contract.

Delegate Cosgrove said that the word "reasonable" frightens him. He wanted to know what would keep an association from saying you could only have a 3x5 inch flag.

Elizabeth Palen explained that that issue would go to the question of being egregious. Senator Whipple said that with a federal law and state law saying what is reasonable and she would be inclined to give the law a chance to work.

A debate over limiting the number of days the flag can be flown took place. Delegate Cosgrove pointed out that September 11 is not included nor is the day the Cole was attacked. He said limiting the number of days the United States flag is flown is an affront. Delegate Amundson agreed that more than 12 days is needed in order to be considered "reasonable."

Senator Whipple asked if the Virginia bill should reference federal law. The response was that it not usually done but can be done if she would like it done. Senator Whipple added that the bill will have to be revised and the first phrase will be taken out so it applies to the United States flag only, and otherwise remain the same.

The work group will look at a revised form of the bill at their next meeting.

Work group member Pia Trigiani was asked if she would draft suggested guidelines for the condominium association for this group's next meeting.

This bill will only be applicable to homeowners and those in condominium associations and will not refer to any flag but instead only the United States flag.

.

HB 621 and SB 248

Delegate Frederic was not present but sent speakers who favored and opposed his bill.

Chris Casey spoke first. He said he is from Mont Clair. It has 26,000 single family homes and the local governing body is the Mont Clair property owners association.

The association has reasonable restrictions on signs such as realty signs, yard sale, and welcome home, and it's a boy, it's a girl signs. Only political signs have a total ban. In 1994, he reported that the United States Supreme Court said that political signs are a form of free speech. It is the public policy of Virginia to provide free speech. This is an extreme, all signs need reasonable middle ground and the property owners' association is overreaching. Six states have provided laws allowing for political signs to be used.

He said this issue is not impairment of contract because if the signs are reasonable and useful for public purpose it required for them to be allowed in order for there to be free speech. Public interest outweighs contractual rights. He asks for a reasonable middle ground: allow political signs for a reasonable time (such as 30 to 60 days), duration, and size (such as 20x30 inches.) HB 621 doesn't help him because of the "notwithstanding" declaration.

Doug Taggart spoke next. He said the creation of Mont Clair was the creation of private government and Mont Clair is bound by deed restrictions, covenants and restrictions, and the community guidelines prohibit posting of political signs. This topic is discussed in the 47 pages of guidelines the property association distributes to potential buyers.

Mont Claire Property Owners' Association should not carve out an exception for political signs. It would infringe on the property association rights. This issue is contractual; when you buy in Mont Clair you buy into it, it is inappropriate for the legislature to intervene.

Senator Whipple clarified that in the review of the rules of the Mont Clair Property Owners' Association this issue was explicitly addressed and voted on by their board, composed of 11 elected volunteer, elected, board members.

Delegate Cosgrove inquired if there has been a homeowner referendum and the answer is this has not been done as of yet.

It was questioned if bumper stickers for a candidate could be on a car in a drive way as you can post and advertise for a home business on the side of a car.

Delegate Cosgrove summarized that certain signs are allowed but not others. It is okay to post "for sale by owner" signs but not a "vote for Bush" or "vote for Kerry" sign. He said there is a tremendous free speech violation and a bill may be needed to prevent this from occurring.

Pia Trigiani said that free speech doesn't apply in private entities and Mont Clair has been challenged on the issue of graffiti. The sign rules were developed in an open meeting and there was an open forum where people could come and speak. Delegate Fredericks's bill, she said, won't pass the Attorney General's review; Senator Puller's might because it has an "unless withstanding" declaration. Property values would go down if political signs were allowed, she said.

Delegate Cosgrove asked about potential language by the property owners' association that declared restrictions on minorities. The response was that such restrictions cannot be written into a covenant and contracts have been voided that said like things. Delegate Cosgrove said he still sees a constitutional infringement because this is a right of free expression.

This issue was not resolved and will be discussed further at the next work group meeting.

Condominium Act/ SB 268

Senator Whipple introduced the topic by saying that a large number of apartments are being turned into condominiums and this has led to displacement. The elderly and disabled have a right to buy their now condo unit, but they are not always able to so and this bill would preserve the unit as affordable over time.

Karen Harwood said that SB 268 applies only to Fairfax County and would allow a certain number of tenants to assign their right to purchase to the Housing Authority or a nonprofit that operates affordable housing. It is a simple bill to give opportunity for those being displaced to stay in place.

Senator Whipple expounded by saying that state law already allows all tenants the right of first refusal; this bill gives the right to assign to a qualified nonprofit or Housing Authority.

Questions included if it is in perpetuity, and the answer was no, the nonprofit or Housing Authority can sell the property. Is the unit then rent controlled? Is the taxpayer subsidizing this action? The answer is yes and that the unit owner would be a Housing Authority or nonprofit that is not in the business of making money.

Delegate Cosgrove questioned if taxes would not then be paid on the condominium to the locality. The answer was yes.

Senator Whipple explained that this bill keeps elderly from being displaced. She said that over 3,000 units in 2003 were converted from multi-family apartments to condominiums. Any locality can allow leases for three years to the elderly to provide for there to be no displacement of the elderly tenant. If the entire property is designated for the elderly, then only 20% of units need to have long term leases. The statute just requires comparable rent for the elderly tenants and the other unit holders. This is essentially worthless if the elderly person is economically displaced. All tenants are given an exclusive 60 day right to purchase their unit.

If under this bill, an elderly person can assign his right to purchase and then re-rent for a three- year period, as long- term leases are inconvenient to the developer anyway, the elderly are far more likely to be assisted.

It was questioned if there would be a requirement to bring the apartment/condo up to code standards. It was answered affirmatively. There is always a requirement to be up to building code standards, but things such as upgrading the carpet and kitchen cabinets is optional and not required by law but is usually done as part of a conversion.

The discussion concluded and the meeting was adjourned at 11:25 a.m.